

# **EXHIBIT 1**

ELECTRONICALLY FILED  
1/31/2024 10:42 AM  
Heidi Percy  
County Clerk  
Snohomish County, WASH  
Case Number: 24-2-00805-31

Insurance Commissioner  
ACCEPTED SOP

FEB 05 2024

TIME: 2 PM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

TOM MACKENZIE,

NO. 24-2-00805-31

Plaintiffs,

SUMMONS

v.

USAA CASUALTY INSURANCE  
COMPANY,

Defendant.

TO DEFENDANT USAA CASUALTY INSURANCE COMPANY:

A lawsuit has been started against you in the above-entitled court by the above-named Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within 40 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiffs are entitled to what they ask for because you have not responded. If you serve a Notice of Appearance on the

SUMMONS – 1

RUSSELL & HILL, PLLC  
3811-A BROADWAY  
EVERETT, WA 98201  
PHONE – (425) 212-9165  
FAX – (425) 212-9168

undersigned person, you are entitled to notice before a default judgment may be entered.

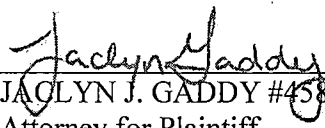
You may demand that the Plaintiff files this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon the person signing this Summons. Within 14 days after you serve the demand, the Plaintiff must file this lawsuit with the court, or the service on you of this Summons and Complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED this 31<sup>st</sup> day of January, 2024.

RUSSELL & HILL, PLLC

  
JACLYN J. GADDY #45805  
Attorney for Plaintiff

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NO. 24-2-00805-31

COMPLAINT

1. COMES NOW the plaintiff, Tom Mackenzie, who alleges as follows:

**PARTIES**

2. Plaintiff Tom Mackenzie has been a resident of Snohomish County, Washington, during all times relevant to this action.

3. Defendant United Services Automobile Association ("USAA") Casualty Insurance Company is a foreign insurance company with its principal place of business in Texas.

COMPLAINT - 1

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**JURISDICTION AND VENUE**

4. The superior courts of the State of Washington have jurisdiction over the parties and subject matter of this litigation.

5. Venue is proper in Snohomish County.

**FACTUAL BACKGROUND**

6. USAA sold an insurance policy to Tom Mackenzie.

7. Tom Mackenzie was covered by the policy of automobile insurance, purchased by Mr. Mackenzie, from defendant. The premiums for the policy were current and the coverage therein was in full force and effect on December 11, 2019. The policy of insurance, policy number 00383 91 75C 7112 1 ("the policy") included, among other coverage, personal injury protection coverage with coverage limits of \$10,000 per person, and underinsured motorist coverage for bodily injury with coverage limits of \$300,00 per person and \$500,000 per occurrence.

8. On December 11, 2019, Tom Mackenzie was lawfully operating a motor vehicle in a parking lot located at 56<sup>th</sup> Street SW and Bickford Avenue, in Snohomish County, Washington, when he was struck by a vehicle operated by Shayla Beazer. Ms. Beazer turned a corner at a high rate of speed and collided with Mr. Mackenzie's vehicle head-on. The airbags in Mr. Mackenzie's vehicle deployed upon impact. His vehicle had to be towed from the scene.

9. Ms. Beazer had only \$100,000 per person and \$300,000 per occurrence in insurance coverage for this collision. Her insurer, GEICO, offered the full \$100,000 on or about January 18, 2022, less than two weeks after receiving Tom Mackenzie's demand package.

1 On or about January 20, 2022, USAA authorized Tom Mackenzie to accept the \$100,000 and  
2 release Ms. Beazer from further liability.

3 **UIM CLAIM BACKGROUND**

4 10. The USAA policy provided that, among other things, USAA would pay  
5 compensatory damages which a covered person was legally entitled to recover from the owner  
6 or operator of an underinsured motor vehicle because of bodily injury sustained by a covered  
7 person and caused by an auto accident.

8 11. On or about December 21, 2021, Tom Mackenzie sent a letter to USAA outlining  
9 the facts of the collision, a summary of his injuries, and a chronology of Mr. Mackenzie's  
10 medical treatment. The letter included Mr. Mackenzie's medical records. GEICO's limits  
11 were noted to be insufficient, and a request was made that USAA tender Mr. Mackenzie's UIM  
12 limits.

13 12. On February 11, 2022, USAA emailed an offer of \$25,000 to settle Tom  
14 Mackenzie's claim.

15 13. On March 7, 2022, Mr. Mackenzie sent an email to USAA declining the offer of  
16 \$25,000.

17 14. On March 9, 2022, USAA faxed a letter declining to accept the demand and  
18 requesting treatment notes of the future care claimed and five years of prior medical records.

19 15. On April 15, 2022, USAA emailed a letter to Tom Mackenzie stating that the  
20 claim was unresolved because it was waiting for the submission of all prior medical bills and  
21 records in support of the bodily injury claim.  
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1           16.     On June 6, 2022, USAA sent a fax acknowledging Russell & Hill as the  
2 representative.

3           17.     On June 28, 2022, USAA mailed a letter to Mr. Mackenzie indicating the claim  
4 was unresolved as it was waiting on the prior records and bills in support of Mr. Mackenzie's  
5 bodily injury claim.

6           18.     On August 12, 2022, USAA mailed a letter to Mr. Mackenzie stating it was  
7 waiting on medical bills and records in support of the bodily injury claim.

8           19.     On September 6, 2022, USAA mailed a letter to Mr. Mackenzie stating it was  
9 waiting on medical bills and records in support of the bodily injury claim.

10          20.     On September 9, 2022, Russell & Hill sent a letter to USAA stating a  
11 background of the subject motor vehicle collision and providing USAA with a list of Mr.  
12 Mackenzie's injury/diagnosis codes, a summary of his medical records and bills, a description  
13 of how Mr. Mackenzie's life has been affected by his injuries, and an offer to discuss the claim  
14 further with USAA if requested. This letter included copies of Mr. Mackenzie's medical records  
15 and bills, including five years of prior records as previously requested by USAA.

16          21.     On September 21, 2022, USAA faxed a letter to Mr. Mackenzie advising that the  
17 UIM demand had been received and a response would be provided within the timeline  
18 requested.

19          22.     On September 30, 2022, USAA faxed a letter to Mr. Mackenzie advising that the  
20 UIM claim was unresolved because USAA was currently evaluating the demand.

21          23.     On October 25, 2022, USAA faxed a letter to Mr. Mackenzie advising that the  
22 UIM claim was unresolved because USAA was currently evaluating the demand.  
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1           24.     On October 26, 2022, Mr. Mackenzie called USAA and left a voicemail  
2 requesting a response to the September 9, 2022 letter.

3           25.     On October 26, 2022, USAA called Mr. Mackenzie and made a settlement offer  
4 of \$35,000 new money. USAA advised that it was not relating Mr. Mackenzie's hip injuries and  
5 surgery to the accident. USAA further advised that they were very close to the top of their range  
6 on the claim.

7           26.     On December 10, 2022, USAA mailed a letter to Mr. Mackenzie stating that his  
8 claim was unresolved because they were pending a response to the most recent settlement offer.

9           27.     On January 11, 2023, Mr. Mackenzie sent an email to USAA with a letter  
10 declining the \$35,000 offer and requesting an explanation as to why USAA was not relating the  
11 bilateral hip injuries to the collision.

12           28.     On January 18, 2023, Mr. Mackenzie called and left a voicemail with USAA  
13 requesting a response to the January 11, 2023 email.

14           29.     On January 18, 2023, Mr. Mackenzie received a letter via email from USAA  
15 stating that a review of Mr. Mackenzie's medical records revealed that he had femoral  
16 acetabular impingement (FAI) prior to the collision, citing to an August 2, 2021 treatment note  
17 from the University of Washington Medical Center.

18           30.     On January 25, 2023, Mr. Mackenzie received a letter from USAA stating that  
19 his claim was unresolved because USAA was in the process of reviewing the counter demand.  
20

21           31.     On February 18, 2023, Mr. Mackenzie received a letter from USAA stating that  
22 his claim was unresolved because they were pending response to the most recent settlement  
23 offer.  
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1           32.     On March 18, 2023, Mr. Mackenzie received a letter from USAA stating that his  
2 claim was unresolved because they were pending response to the most recent settlement offer.

3           33.     On March 31, 2023, Mr. Mackenzie sent an email to USAA providing an  
4 explanation and specific exhibits that showed Mr. Mackenzie did not have any hip issues prior  
5 to the collision, citing to the five years of prior medical records provided and to specific exhibits  
6 in the file supportive of this position. Mr. Mackenzie offered to provide additional proof or  
7 documentation needed to help resolve the claim.

8           34.     On April 17, 2023, Mr. Mackenzie called USAA and requested a response to the  
9 March 31, 2023 email. Mr. Mackenzie also sent an email to USAA requesting a response.

10          35.     On April 19, 2023, USAA emailed Mr. Mackenzie and requested a signed  
11 medical authorization to allow it to request prior medical records, an interview with Tom  
12 Mackenzie to get a better understanding of his lifestyle and medical status prior to the date of  
13 loss, and a signed affidavit from treating surgeon Navin Fernando, MD.

14          36.     On May 10, 2023, Mr. Mackenzie emailed a declaration from primary care  
15 provider Joshua Webb, ARNP, updated treatment records from the University of Washington  
16 Medical Center, and a massage therapy referral dated May 9, 2023. Mr. Mackenzie provided a  
17 breakdown of all prior records ordered and requested clarification from USAA on what  
18 additional prior medical records it wanted to review. Mr. Mackenzie provided confirmation that  
19 he is willing to proceed with a telephone conference and reiterated the offer to provide any  
20 additional information or documentation needed to resolve the claim.

21          37.     On May 22, 2023, Mr. Mackenzie emailed USAA requesting a response to the  
22 email sent on May 10, 2023. He also sent a signed declaration from physical therapist, Lucas  
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1 Takeuchi, PT. Mr. Mackenzie also provided dates when he was available to schedule a  
2 conference call.

3 38. On May 22, 2023, USAA emailed Mr. Mackenze back and provided dates and  
4 times to schedule a conference call.

5 39. On May 23, 2023, Mr. Mackenzie emailed USAA requesting that the conference  
6 call be scheduled on May 24, 2023 at 9AM PST.

7 40. On May 24, 2023, Mr. Mackenzie spoke with USAA and provided a statement as  
8 to his injuries and ongoing treatment following the collision.

9 41. On June 6, 2023, Mr. Mackenzie emailed USAA requesting a status on resolving  
10 the claim following the conference call on May 24, 2023.

11 42. On June 14, 2023, Mr. Mackenzie called USAA requesting an update on the  
12 case.

13 43. On June 14, 2023, USAA emailed Mr. Mackenzie advising him that USAA was  
14 reviewing the claim with leadership to see where they were at with settlement.

15 44. On June 20, 2023, USAA emailed Mr. Mackenzie requesting his willingness to  
16 mediate the claim.

17 45. On June 20, 2023, Mr. Mackenzie emailed a letter to USAA requesting how  
18 USAA determined its evaluation of Mr. Mackenzie's claim, whether USAA related the bilateral  
19 hip tears to the collision, and if not, why USAA was in disagreement with Mr. Mackenzie's  
20 treating orthopedic surgeon and primary care provider. Finally, Mr. Mackenzie asked whether  
21 USAA accepted the medical expenses listed in the September 9, 2022 letter as reasonable,  
22 necessary, and related to the subject collision.  
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1           46.     On June 22, 2023, USAA sent a letter to Mr. Mackenzie stating the UIM claim  
2 was unresolved because it was waiting for contact to discuss settlement of the claim.

3           47.     On July 3, 2023, Mr. Mackenzie received an email from USAA stating it had  
4 evaluated Mr. Mackenzie's claim as an aggravation of a pre-existing condition based upon an  
5 August 2, 2021 note in the University of Washington Medical Center reports. No further  
6 explanation was provided as to the evaluation of Mr. Mackenzie's claim.

7           48.     On August 17, 2023, Mr. Mackenzie provided a signed declaration to USAA via  
8 email, completed by treating surgeon Navin Fernando, MD, specifically addressing the August  
9 2, 2021 chart note and opining that the motor vehicle collision was the precipitating event that  
10 necessitated the bilateral hip replacements.

11           49.     On August 31, 2023, USAA sent a letter to Mr. Mackenzie stating the UIM claim  
12 was unresolved because it was currently monitoring the claim to determine if there will be a  
13 UIM claim and requesting the underlying carrier's declaration page along with Mr. Mackenzie's  
14 records and bills, all of which had already been provided to USAA.

15           50.     On September 1, 2023, Mr. Mackenzie emailed USAA requesting a response to  
16 the August 17, 2023 email and declaration from Dr. Fernando.

17           51.     On September 5, 2023, USAA emailed Mr. Mackenzie and advised that it does  
18 not have Mr. Mackenzie's claim evaluated at or near policy limits.

19           52.     On September 11, 2023, Mr. Mackenzie called USAA regarding the August 31,  
20 2023 letter advising that he had already provided third party insurance information and a doctor  
21 declaration.  
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1           53.     On October 30, 2023, USAA sent an email to Mr. Mackenzie stating his claim  
2 was unresolved because it was waiting for a response to the most recent settlement offer.

3           54.     On November 17, 2022, USAA declined to tender UIM benefits and offered  
4 Tom Mackenzie \$50,000.

5           55.     On November 29, 2023, USAA sent an email to Mr. Mackenzie stating his claim  
6 was unresolved because it was waiting for a response to the most recent settlement offer.

7           56.     On December 27, 2023, USAA sent an email to Mr. Mackenzie stating his claim  
8 was unresolved because it was waiting for a response to the most recent settlement offer.

9                   **FIRST CAUSE OF ACTION: COMMON LAW BAD FAITH**

10          57.     Plaintiff incorporates all preceding allegations as if fully restated herein.

11          58.     At all material times, defendant owed plaintiff a duty of good faith and fair  
12 dealing related to his policy and claims.

13          59.     This common law duty required, among other things for an insurer to do the  
14 following in good faith:

- 15                   • Deal fairly with its insured, giving equal consideration in all matters to the  
16 insured's interest.  
17                   • Conduct any necessary investigation in a timely fashion.  
18                   • Fairly, objectively, and thoroughly investigate the claim.  
19                   • Reasonably and objectively analyze the information collected and submitted  
20 by the insured.  
21                   • Avoid making claim decisions on suspicion or conjecture.  
22                   • Pay the undisputed value of any UIM claim.

23          60.     USAA breached these duties and failed to act reasonably regarding Mr.  
24 Mackenzie's UIM claim.

25          61.     USAA breached its duty to reasonably investigate and evaluate Mr. Mackenzie's  
claims and such violations were a proximate cause of economic and noneconomic harm.

**SECOND CAUSE OF ACTION: INSURANCE FAIR CONDUCT ACT**

62. Plaintiffs incorporate all preceding allegations as if fully restated herein.

63. USAA unreasonably denied plaintiff's claims for payment of benefits within the meaning of RCW 48.30.015(1).

64. In addition to unreasonably denying UIM benefits in this case, USAA has violated the following provisions of the Washington Administrative Code:

- USAA failed to acknowledge and act reasonably promptly to communications with respect to plaintiff's claims in violation of WAC 284-30-330(2);
- USAA failed to adopt and implement reasonable standards for the prompt investigation of claims, in violation of WAC 284-30-330(3);
- USAA refused to pay plaintiff without conducting a reasonable investigation in violation of WAC 284-30-330(4);
- USAA did not attempt in good faith to effectuate prompt, fair and equitable settlement of plaintiff's claims, for which liability was reasonably clear, in violation of WAC 284-30-330(6);
- USAA compelled plaintiff to initiate litigation to recover amounts due him under his insurance policy by offering substantially less than the amount that was or will be recovered in violation of WAC 284-30-330(7);
- USAA attempted to settle Mr. Mackenzie's claims for \$50,000, which is less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application in violation of WAC 284-30-330(8);
- USAA failed to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or application law for a denial of the claim in violation of 284-30-330(13);
- USAA failed to complete its investigation of a claim within thirty days after notification of claim. To the extent the investigation could not reasonably be completed within that time, USAA failed to complete its investigation within a reasonable time, in violation of WAC 284-30-370;

65. On October 17, 2023, notice was sent under the Washington Insurance Fair Conduct Act to USAA and the Washington State Insurance Commissioner with the basis for Tom Mackenzie's claim that USAA had unreasonably denied his claim for benefits and that it

1 violated the provisions of WAC 284-30-330. More than 20 days have elapsed since October 17,  
2 2023.

3 66. Plaintiff has provided timely and adequate notice to defendant under RCW 48-  
4 30-015(8).

5 67. Plaintiff has suffered emotional distress, inconvenience and other damages as a  
6 proximate result of the conduct that violated the Insurance Fair Conduct Act.

7 **THIRD CAUSE OF ACTION: CONSUMER PROTECTION ACT**

8 68. Plaintiff incorporates all preceding allegations as if fully restated herein.

9 69. USAA's actions are in violation of the Consumer Protection Act ("CPA"), RCW  
10 19.86., et seq.

11 70. As a result of USAA's violations of the CPA, plaintiff is entitled to recover  
12 reasonable attorney's fees and costs incurred in the prosecution of this action and for exemplary  
13 damages authorized by RCW 19.86.090, including, but not limited to, treble damages.

14 **FOURTH CAUSE OF ACTION: BREACH OF CONTRACT**

15 71. Plaintiff incorporates all preceding allegations as if fully restated herein.

16 72. USAA's actions are in violation of the terms and conditions of the insurance  
17 policy.  
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19 73. As a result of USAA's breach of contract, plaintiff is entitled to recover all  
20 damages resulting from defendant's breach.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff prays for relief as follows:

23 74. Economic damages for plaintiff in such amounts as are proven at trial.  
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JACLYN J. GADDY, WSBA #45805  
Attorney for Plaintiff